

## REMARKS

In the Office Action mailed October 31, 2006, the Examiner rejected claims 1-4, 6-15, 17-25, 27-30 and 32-36.

### I. Rejections under 35 USC 103

The Office Action rejected claims 1-4, 6-15, 17-30 and 32-36 under 35 USC 103 as being unpatentable and obvious over combinations of the following references: Locke et al. (US 6,291,019); Burton (US 5,925,466); Wade et al. (US 5,580,945); Cannady, Jr. et al. (US 4,480,001); Meader, Jr. et al. (US 4,025,683); Uhran et al. (US 4,145,512); Thomaidis et al. (US 5,626,840). Applicants traverse these rejections below.

In regard to the determination of obviousness for the claims of the present application, Applicants respectfully request consideration of newly cited caselaw that specifically addresses the type of obviousness that the Office Action asserts. The Office Action suggests, at page 4 thereof, that "Columns 4 and 10 of Locke indicate that the ranges [the ranges amines of Locke et al.] are within the applicant's range [the amine ranges of Applicants' claim]" and that "overlapping ranges are prima facie obvious." Assuming that this suggestion is true<sup>1</sup>, the law suggests that, "where there is a range disclosed in the prior art, and the claimed invention falls within that range, there is a presumption of obviousness. But the presumption will be rebutted if it can be shown: (1) That the prior art taught away from the claimed invention or that there are new and unexpected results relative to the prior art." *Iron Grip Barbell Co. v. USA Sports Inc.*, 73 USPQ2d 1225 (Fed. Cir. 2004) citing *In Re Geisler*, 116 F.3d 1465, 1471; 43 USPQ2d 1362 (Fed. Cir. 1997) and *In re Woodruff*, 919 F.2d 1575, 1578; 16 USPQ2d 1934 (Fed. Cir. 1990). Applicants have already shown that Locke et al. teaches away from the ranges in Applicants' claims, but make the argument even more specifically.

Locke et al. teaches toward the use of nearly 100% by weight primary amine for achieving substantially instantaneous cure rates. In contrast, the claims of the present

invention recite amounts of secondary amine between about 40% and about 80% and such amine is employed, at least in part, because it slows the cure rate. As such, Locke et al., which is the main reference cited by the patent office, teaches away from the use of the relatively high amounts of secondary amine suggested by the claims of the present application.

The teachings of Locke et al. toward high curing rates and high amount of primary amine are numerous. In the abstract, Locke et al. suggest that, “the material cures substantially instantaneously in the ambient environment”. Locke et al. make this same suggestion in their Background of the invention, in their Summary of the Invention, in their Detailed Description of The Preferred Embodiment and in their claims. Locke et al. also make clear, particularly through their examples, that curing accomplished “substantially instantaneously” is curing that takes about 15 to 20 seconds and is brought about through substantially exclusive use of primary amines as opposed to secondary amines. (See all the examples, but particularly, examples I, II and III)(also note that the prosecution history of the present applications already discusses the primary amine nature of the Jeffamines of Lock et al.). This type of teaching away from the use of any substantial amount of secondary amine certainly teaches away from the use of between about 40% and about 80% secondary amine as recited in the claims of the present application.

Moreover, the cited caselaw (*Iron Grip Barbell Co. v. USA Sports Inc.*; *In Re Geisler*, and *In re Woodruff*) makes clear that when the prior art teaches away from the claimed range, that claimed range becomes particularly patentable when the range provides an advantage and that advantage is brought out in the claims. For the present application, the arguments of record have already been presented suggesting the advantages of the particular range claimed and those advantages have been particularly discussed in regard to their use for a bedliner of a vehicle.

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<sup>1</sup> Applicants contend that there is no specific range of secondary amine provided in Locke et al., rather, at best, Locke et al. suggest the possibility of secondary amine.

Moreover, applicants point out that, for the skilled artisan to arrive at the invention of the claims of the present application, the skilled artisan would need to modify Locke et al. at least thrice and the modification would be in contravention to the teachings of Locke et al. In particular, the skilled artisan would be required to pick a range of secondary primary amine that is not taught by Locke et al. and from which Locke et al. teaches away. The skilled artisan would then be required to look to another reference to find a particular secondary amine (an aspartic acid ester) and then look to another reference to determine where to apply the admixture of the claims (i.e., to a bedliner). All of this modification would need to be done to arrive at the claims of the present application while the prior art either provides no motivation for such modification or teaches away from such modification. Applicants contend that this type of modification is based upon impermissible hindsight.

Finally, Locke et al. is directed toward vibration damping. The considerations for vibration damping are very different from the consideration involved in providing the type of protective coating that is being provided to the bedliner in the claims of the present application. While the high amounts of primary amines of Locke et al. may be suitable for stiffening automotive vehicle parts to dampen vibrations, the teachings of Locke et al. do not typically provide a coating particularly desirable for a vehicle bedliner in the manner that the coating of the claims of the present application are desirable.

In view of the above, Applicants respectfully request withdrawal of the rejections of the claims of the present application.

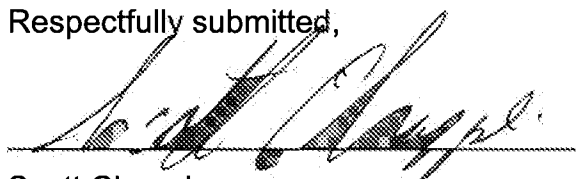
### **CONCLUSIONS**

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 04-1512 for any fee which may be due.

Respectfully submitted,

Dated: 7 Dec, 2006

A handwritten signature in dark ink, appearing to read "Scott Chapple", is written over a horizontal line.

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